

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

J-W OPERATING COMPANY (Number 3: 11-CV-920-F
Plaintiff, (
vs. (
Oilfield Services (
Defendant. (January 4, 2012

Hearing on Motion to Transfer
Before the Honorable Royal Furgeson

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18:00 1

P R O C E E D I N G S:

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THE COURT: Would the clerk call the case and could I get counsel to announce their names and their representation. So Mr. Frye, if you will please call the case.

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MR. FRYE: 3:11-CV-920, J-W Operating Company versus Oil Field Services.

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THE COURT: For J-W Operating Company.

MS. WALKER: Julie Walker and David Miller.

THE COURT: Great. Ms. Walker and Mr. Miller, welcome.

THE COURT: And for Oil Field Services.

MR. LAMBERT: Kenneth Lambert and this is Keith Robb.

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THE COURT: Wonderful. Welcome both of you. Glad to have you all here.

Okay. I believe that the Defendant Oil Field Services would like this case to go to Louisiana, and so Mr. Lambert, why don't you and Mr. Robb give me your views on that.

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MR. LAMBERT: You want us to use the stand?

THE COURT: That's perfect. Thank you so much.

MR. LAMBERT: Essentially -- And I'm sure counsel will correct me if I'm wrong on this -- this involves an oil field accident in Shreveport, Louisiana.

14:08 1 It's not where somebody was hurt. There was damage. It
2 was an oil well, and some casing was being run and the
3 string of casing somehow got dropped in the hole, and
4 there was remediation attempted, and eventually the hole
5 was plugged, and they drilled another hole. Plaintiff's
6 claiming it's our company's responsibility, and we beg to
7 differ. No surprise there. Plaintiffs filed a lawsuit
8 here in Dallas in state court which we removed to federal
9 court. Our client filed a lawsuit in Louisiana in
10 Shreveport. And both cases have been at a stopping point.
11 Clearly nobody wants to be trying the case in Dallas and
12 in Louisiana at the same time.

13 THE COURT: Remind me who is your Louisiana
14 judge?

14:09 15 MR. LAMBERT: Tom Stagg.

16 THE COURT: Well, let me tell you, I can barely
17 carry his briefcase. I don't know how long he's been a
18 district judge now. Probably thirty years or so. Forty
19 years. So he's a wonderful judge, very bright, very able
20 and very pleasant, just a good guy. And the rest of us
21 look at him with awe for all of his long years of service
22 and knowledge, and you can tell him I said so.

23 MR. LAMBERT: Well, as we see, Louisiana, they
24 are sitting there will waiting to see what you do with the
25 case, and not a lot of discovery clearly has taken place

14:09 1 because nobody wants to act like they are waiving their
2 arguments.

3 THE COURT: I did notice you had a little
4 problem with a deposition I think. Hopefully, you can
5 figure out how to get that straightened out. But we will
6 worry about that in a minute.

7 MR. LAMBERT: Essentially, what the situation
8 is, this accident happened in Louisiana. Everything that
9 happened relating to it -- all the actions, all the
10 activities, the well that was drilled, the remediation
11 that was done, the well that was plugged -- all of that
12 was in Louisiana, and I don't think anybody contests that
13 Louisiana law is eventually going to apply to the facts of
14 this case. And as a threshold matter, obviously any court
14:10 15 can apply any other state's laws. Louisiana law is a
16 different animal from Texas. And personally I would
17 prefer to have a Louisiana lawyer arguing and interpreting
18 Louisiana law. And I suspect that's what's going to end
19 up happening, the difference being whether we have local
20 counsel here with a Louisiana lawyer that comes in or
21 whether it's all in Louisiana where the lawyers are right
22 there.

23 THE COURT: Now, let's see. I guess there are
24 really quite a few witnesses to this incident.

25 MR. LAMBERT: Yes, sir, your Honor, it appears

14:11 1 so. The hard thing is with just the disclosures where we
2 can see who some of the witnesses are and who was involved
3 actually out there on our client's behalf or the
4 plaintiff's behalf, there are also a number of remediation
5 companies that were out there trying to fish out the
6 casing. We at least as far as I know don't know who the
7 actual individuals are that were involved in that process.
8 We just know the names of the companies. They are all
9 Louisiana companies, all based in Louisiana, and so we can
10 only assume those are people in Louisiana. Until we take
11 additional discovery, there is no way to know. I know the
12 plaintiffs say who really cares about that. They were
13 just trying to fix it. But I think that's going to be
14 relevant in this case -- what they saw, what they were
14:12 15 trying to do, whether they spent too much time and too
16 much money trying to fix the problem, whether it should
17 have been capped and started a new drilling operation.
18 Those are going to be relevant and those people are going
19 to be relevant. If the driller who's a party to the case
20 in Louisiana but not a party to this case, I believe he's
21 based here in Dallas. We don't know the actual person who
22 was the driller on site, whether he was hauled out from
23 Dallas or a local Louisiana person, because the driller
24 won't tell us.

25 THE COURT: The driller is in the Louisiana

14:12 1 case.

2 MR. LAMBERT: Yes, he's made a defendant in the
3 Louisiana case, but he's not a party to this case. Is
4 that correct?

5 MS. WALKER: Patterson-UTI Drilling Company is
6 not a party to case. We know the driller who was Joe
7 Paul, and we disclosed that in our amended disclosures.
8 He's actually in Lewisville.

9 MR. LAMBERT: So apparently now we do know who
10 he is.

11 But essentially, what we're stuck with is there
12 are a number of witnesses. It appears that the bulk of
13 them probably are in Louisiana but there are certainly
14 some out here. I'm not going to come in here and say
14:13 15 there is nobody here in Dallas because clearly the
16 plaintiffs are located here and the driller's offices are
17 located here. No questions that Shreveport would be a
18 place that would be proper for this to be tried. The
19 question of whether this would have been appropriate or
20 not is no longer relevant because we have removed the case
21 to federal court to waive any arguments related to venue,
22 of course.

23 Essentially, this is a Louisiana action. Took
24 place in Louisiana. Everything happened there. It makes
25 sense for it to be tried or resolved in a more local type

14:14 1 environment as opposed to dragging everybody and all the
2 matters out here to Dallas. I know we're not in the
3 1800's where it would take you two or three days to get
4 from there to here. I know people can fly or drive in a
5 few hours. But it makes more sense to have the court and
6 jury and all of that in the local area resolving the
7 matters of local interest. And that is the bulk of our
8 argument right there, your Honor.

9 THE COURT: Let me ask and I appreciate that. I
10 did notice that maybe the parties had kind of gotten
11 cross-wise on getting depositions started. Are the
12 parties having trouble working with each other?

13 MR. ROBB: We are not. It was a bit of a
14 mishap, and if it aids the Court, we made a motion for
14:15 15 protective that we don't need. We have reached an
16 agreement, a time for the deposition, and we have people.
17 Ms. Walker is poised I think to notice the deposition as
18 soon as I confirm the location is okay, and unfortunately,
19 the holidays missed that. We are playing well together.
20 Whatever the Court finds easiest, we can ask to withdraw
21 the motion or.

22 THE COURT: I can deny it as moot.

23 MR. ROBB: I think that would be a fine result.
24 I think the deposition is scheduled on the 19th. I think
25 we need to make that official.

14:15 1 MS. WALKER: We have three depositions scheduled
2 for the 19th and 20th, and part of the issue with the
3 motion to compel -- and this is the delay that came about.
4 We had the initial deposition of the corporate
5 representative set for December 7th. We were trying to do
6 that to meet this Court's deadline of I think December
7 30th in order to designate our experts. Because we could
8 not get a corporate representative of Oil Field Services
9 on December 7th, despite -- We can go into the merits of
10 that motion. But despite trying to work that out
11 beforehand, what we have got is delay. So I sit here
12 now -- And quite honestly, we would have that deposition
13 done and our experts designated if it wasn't for that
14 delay. So as far as the portion of the motion to transfer
14:16 15 that deals with that issue, one of the practical concerns
16 is the delay and is how much work has been done. We have
17 done significant work. We have done written discovery.
18 J-W Operating Company has sent written discovery and
19 requested depositions and tried to push this case along.
20 But we got a little bit sidetracked with the motion for
21 protective order. But yes, it is set now, and hopefully,
22 we won't have that issue again.

23 THE COURT: Well, I'm always glad to see the
24 lawyers working together. Sounds like there were initial
25 hiccups. But I commend a professional approach to these

14:17 1 matters. Well, your argument has been very helpful,
2 Mr. Lambert. Thank you so much.

3 Now I'll hear from you, Ms. Walker.

4 MS. WALKER: If I may.

5 THE COURT: Yes, ma'am.

6 MS. WALKER: First of all, I think counsel sort
7 of handled Part One of my argument which is in the removal
8 motion itself, they did admit the venue is proper in this
9 district. And because the United States District Court
10 for the Northern District is where Dallas sits and that's
11 where the state court action was filed and pending
12 removal. That of course is not an issue that we need to
13 look at for purposes of this.

14 Just to backtrack a little bit. I know the
14:17 15 Court has read all of our briefing. J-W Operating Company
16 is a Dallas corporation. It's based in Addison, Texas.
17 It's the principal place of business. It's a Texas
18 corporation. The driller, Joe Paul, who did the drilling
19 work in my understanding is from Louisville, and a lot of
20 other folks that were on the drill rig at the time -- And
21 there were really only a handful that I understand were on
22 duty at the time, three or four for Patterson drilling --
23 they are scattered to the winds. They are not necessarily
24 within the jurisdiction of Shreveport anymore than here.
25 One of them I think is in Georgia, and they are in other

14:18 1 places as well. So to say that it would be better in
2 Shreveport than it is here for those folks, they are a
3 pretty transitory life working on a drilling rig.

4 THE COURT: You have not yet sued Patterson. Do
5 you plan to sue Patterson or do you think you have done
6 enough research to think that they are not implicated in
7 this case?

8 MS. WALKER: Based on our investigation, we
9 decided in this lawsuit not to bring in Patterson as a
10 party. They are a party in the Louisiana case and have
11 actually worked with us to provide some of the information
12 that we have on our amended disclosures. For instance,
13 the location, name of the driller. I think we have some
14 other information such as statements from Patterson. So
14:19 15 we have got their view on what happened as far as that
16 goes. We have -- J-W Operating Company had a company man
17 out at the site who's not within the Northern District,
18 but he also is the J-W Operating Company -- was the
19 company man who worked for a different company, but no one
20 here has said that he would be unwilling to testify. And
21 I think that's what courts generally say. There is a
22 strong burden that the defendant has to prove to go in
23 favor of transfer of venue in this case. There is the
24 private factors and the public factors. And one of the
25 main private factors is the delay that has come about.

14:19 1 There is numerous cases, one of which is really
2 instructive by your colleague, Judge Boyle, in the Duvall
3 Electric case. She denied a motion to transfer back in
4 February of 2011 where the defendant waited just four
5 months after filing an answer, but the joint status
6 reports had been filed. Disclosures had been exchanged.
7 A scheduling order had been entered, and experts had been
8 designated. It was four months from trial. Here, we're
9 six months out.

10 THE COURT: Remind me what kind of case that
11 was, if you would.

12 MS. WALKER: It was an ERISA case. And there
13 was the presumption of plaintiff's venue taking precedence
14 just as there is a presumption unless there is clear
14:20 15 weight against having a venue in Dallas that that is
16 proper. We have sixty days left in discovery, and the
17 trial is four and a half months away. To move it is one
18 of the private factors that would militate against
19 transfer of the case, would be the practical problems that
20 make trial easy, expeditious and expensive. And the delay
21 that is shown in the Duvall Electric case. I have a copy
22 of the opinion.

23 THE COURT: That's Judge Boyle's case?

24 MS. WALKER: It is.

25 THE COURT: Oh, great. That would be helpful.

14:21 1 MS. WALKER: Judge Boyle in this opinion
2 actually relied upon a lot of case law that we cited in
3 our brief. The American Airlines opinion and N2
4 Consulting, both of which the motion to transfer venue was
5 denied due to delay, and Judge Boyle in the Duvall
6 Electric case said "The delay in this case weighed very
7 strongly and heavily against transfer simply because it
8 was going to be so disruptive to the case and the
9 scheduling order that was pending."

10 One of the things I would like to address, we
11 have talked a little bit about the personnel that was on
12 the site at the location of the accident. The well was
13 drilled in Bossier, Louisiana, and the drilling rig after
14 fishing attempts in the hole were unsuccessful, the well
14:22 15 was sidetracked and completed, and the drilling rig has
16 moved on to other parts. So if anybody were to go out to
17 this drilling site right now, what they would see is a
18 well head and nothing more. Nobody has said a trip to the
19 well site would be instructive or helpful. The drilling
20 rig itself is a different matter, and whether that's in
21 Shreveport or Dallas, it's again a transitory kind of
22 thing.

23 The cost of attendance for witnesses -- and what
24 we're talking about the mainly in this case, there is two
25 different types of witnesses. Witnesses that are party

14:23 1 witnesses and witnesses that are nonparty witnesses. The
2 party witnesses for Oil Field Services are mainly located
3 locked according to their affidavit are located in the
4 Shreveport area. The witnesses for the J-W Operating
5 Company are located primarily in the Dallas area. So the
6 nonparty witnesses -- the willing witnesses that are able
7 to attend, the cost of that is what we're looking at here
8 is one of those five factors. Many of the witnesses that
9 we listed, that J-W Operating Company listed on its
10 disclosure statement, were listed to authenticate business
11 records for the purposes of approving up invoices. The
12 damages in this case were roughly -- It was right over 2.1
13 million dollars, and authentication of those records could
14 be done without attendance of those witnesses, just
14:23 15 through business records alone.

16 If there is a question as far as whether fishing
17 attempts went on too long or took too long, those are
18 decisions that are made by J-W Operating Company personnel
19 or their designees and not necessarily the fishing or
20 logging companies. No one has said they would not be
21 willing participants, and to my knowledge, there was no
22 contention that they would not be willing participants
23 able to come over and willing to come over to Dallas for
24 depositions, if necessary. That's one of the things the
25 court at least in Duvall Electric and other cases that it

14:24 1 cites looks at, is whether or not a willing witness is a
2 willing witness and what the cost would be. In this case
3 we don't have any evidence before in the Court as to what
4 the cost for a willing witnesses would be.

5 THE COURT: Most of those third-party witnesses
6 are in the Shreveport area?

7 MS. WALKER: The nonparty witnesses for
8 Patterson, the driller himself --

9 THE COURT: I'm sorry. Nonparty witnesses.
10 Thank you.

11 MS. WALKER: The driller himself, Joe Paul, is
12 in Lewisville, right north of Dallas. Several of the
13 other ones I think we have listed on our --

14 THE COURT: As you said those employees of the
14:25 15 driller, the Patterson Company, the people that were there
16 as witnesses they have scattered to the winds and followed
17 other opportunities.

18 MS. WALKER: I believe they are still with
19 Patterson. Joe Paul is still with Patterson. He's in
20 Lewisville. There were five other individuals on site.
21 Not necessarily on the rig at the time but at least on
22 duty at the time. One of them lives in Augusta, Arkansas.
23 One in Tyler, Texas. One in Gardendale, Texas. One in
24 Jasper, Georgia and another in Tyler, Texas. So to say it
25 would be more convenient for them in Shreveport is not

14:25 1 necessarily the case. Those are the individuals that we
2 understand were on duty.

3 THE COURT: I'm wondering if I could anticipate
4 that if I did transfer this case -- If I did not, then the
5 defendant would probably bring Patterson in. Since they
6 have sued them in Louisiana you'd think -- That seems to
7 be an assumption that would hold water.

8 MS. WALKER: That's I think probably a
9 reasonable assumption, although I couldn't speak for them.
10 I will say that I was a little bit surprised just as I was
11 surprised when this motion to transfer venue came across
12 so late in time. If they were going to do that, the
13 deadline to join additional parties was back on September
14 15th. So had they wished to do that, they could have
14:26 15 brought Patterson in this lawsuit before that time.

16 THE COURT: Okay. So at least under the
17 scheduling order, the time for bringing in third parties
18 has elapsed.

19 MS. WALKER: That's correct. To my
20 understanding, there is nothing that would precludes them
21 for moving for leave to do that regardless, and Patterson
22 is obviously on notice that this lawsuit is pending as
23 well.

24 THE COURT: Thank you. Continue. Thank you so
25 much, Ms. Walker.

14:27 1 MS. WALKER: Along with the cost of attendance
2 for willing witnesses, one of the other factors that is
3 looked at is whether or not compulsory process or subpoena
4 power can be used to bring in nonwilling witnesses. And
5 the Courts in the Northern District of Texas have found in
6 similar cases that the subpoena factor is neutral where
7 the defendant has not alleged that nonparty witnesses are
8 unwilling to testify, and that's exactly what we have
9 here. That's what we had in the Duvall Electric case, and
10 there was a case Ternium International U.S.A. that Judge
11 Fish decided back in 2009 which had a similar fact
12 situation. That's cited in our brief as well. All of
13 these factors that we look at and have been provided by
14 the defendants in their brief are not exhaustive, and the
14:28 15 Court obviously has the discretion to look at a number of
16 different factors as to what would make it convenient for
17 the parties. But looking at the main issues that
18 defendant has brought up in their pleadings, which is
19 essentially the witnesses and availability of witnesses,
20 and what plaintiff in response, J-W Operating Company, has
21 said, which is the delay that we are faced with and the
22 things that have occurred in the meantime to try to get
23 this case running for trial militate in favor of North
24 Texas as being that forum.

25 Where the plaintiff chooses forum has been found

14:28 1 to be of paramount consideration by some of these Northern
2 District of Texas cases, and where its place of
3 incorporation and principal place of business is also in
4 that same forum, more weight is placed on that choice.

5 The local interest being another factor, local
6 interest of the Dallas community and the Northern District
7 in resolving claims that involve local businesses like J-W
8 Operating Company is also a factor to be considered.

9 If the Court does not have any further
10 questions, I will rest.

11 THE COURT: No. Thank you so much for that
12 excellent presentation, Ms. Walker. You have and
13 Mr. Lambert have both done a good job.

14 Let me reflect on this a little bit more. I
14:29 15 will enter an order that denies the motion for protective
16 order as moot. I'm glad to see you all are working
17 together. I'll think on this, and then I should give you
18 and answer hopefully by the end of the week, would be my
19 goal. But let me work on it a little bit more. The
20 arguments were excellent, and it's always good. It's
21 always a pleasure to have really good lawyers in court,
22 and so I am starting the new year off right, and I
23 appreciate the good help that you have given me in every
24 respect. I hope you all are having a good new year and
25 may 2012 be healthy, happy and prosperous for you.

14:30 1

Thank you so much.

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C E R T I F I C A T I O N

I, Cassidi L. Casey, certify that during the proceedings of the foregoing-styled and -numbered cause, I was the official reporter and took in stenotypy such proceedings and have transcribed the same as shown by the above and foregoing Pages 1 through 18 and that said transcript is true and correct.

I further certify that the transcript fees and format comply with those prescribed by the court and the Judicial Conference of the United States.

s/Cassidi L. Casey

CASSIDI L. CASEY
UNITED STATES DISTRICT REPORTER
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
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